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Kittitas County Board of County Commissioners
205 W. 5th Avenue, Suite 108
Ellensburg, WA 98926

(hand-delivered)

May 15, 2006

Re: *Kittitas Valley Wind Farm*

Board of County Commissioners,

This letter is written in the hope that Horizon Wind Energy and the Kittitas County Board of Commissioners can continue their discussions toward the shared end of negotiating a mutually satisfactory Development Agreement that would enable the issuance of a determination of land use consistency regarding the Kittitas Valley Wind Power Project. We are initiating this contact based on our sincere desire to resolve this matter with the County and on the representations made to the Energy Facility Site Evaluation Council at its regular meeting on May 8, 2006, by Deputy Prosecutor James Hurson on behalf of Kittitas County that the County desired to continue negotiations with the applicant.

Horizon remains interested in structured negotiations with clear objectives. The multiple public hearings and Board deliberations over the past four months have reduced the major outstanding material issue to setbacks from non-participating residential structures adjacent to the project.

Horizon has been strongly committed to working through Kittitas County to permit the Kittitas Valley Wind Power Project. That commitment has been demonstrated by the withdrawal of our earlier EFSEC preemption request; the October 2005 submission of a project development activities application; the December 2005 proposed findings of fact and conclusions and related documents; the funding of participation by numerous expert witnesses at the January 2006 hearings; and our active efforts to respond to the Board of County Commissioners' concerns throughout the hearings process, most recently in our April 25 letter responding to specific points raised at the April 12 hearing and our

redrafted Development Agreement submitted on May 1 as requested by the Board of County Commissioners on April 27.

Although the originally proposed site layout met both objective criteria established by the State of Washington for minimizing noise effects and generally accepted criteria for safety setbacks, Horizon further reduced and – where possible – realigned wind turbine generators to address comments from the Board of County Commissioners and the public related to the subjective considerations of visual impact and shadow flicker, resulting in a project with approximately one-half the number of turbines proposed in the original application.

Horizon has proposed three different setbacks to mitigate this. A 1,000-foot setback was contained in the draft Development Agreement submitted to Kittitas County in December, 2005. On April 19, 2006, project manager Dana Peck personally spoke with CDS Director Piercy about the applicant's willingness to increase this to a 1,250 foot setback and advised him via email that this distance was at the outer limit of the project's viability. Mr. Peck accepted Mr. Piercy's offer to provide this information to the BOCC members prior to their independent site visits to the Hopkins Ridge project. Horizon clarified, in its April 25, 2006, letter to the Board of County Commissioners, that it would agree that no more than 65 turbines would be installed at the project site as part of the proposed revisions to the Development Agreement and that an additional 32% increase in the proposed setback, to one-quarter mile from existing, non-participating residences, would be maintained. Horizon also stated that this 65-turbine site design represented the smallest project that was still economically viable. The County did not respond to the applicant regarding the two later proposals.

We understand the County's purpose in adopting the ordinances under which we are presently proceeding. However, we believe some unintended consequences of the process under the County's Wind Farm Ordinance have occurred that have adversely affected open communications and created a climate that leads to misunderstanding. The process can lead an applicant to feel that the negotiation process is unfair and one-sided. The County commands complete power to deny and forces the applicant to respond without advance notification of position on the most material of issues, while being stymied by the inability to introduce and exchange new information. We note that at the May 3 hearing, Horizon was chastised for offering "new information" while the BOCC members each offered significant new information regarding their visits to the Hopkins Ridge project.

True negotiations consist of a fluid exchange of ideas, comments and new information, all done in an open, fair process. The County process achieved this during the Wild Horse Project, during which Horizon and Puget Sound Energy held numerous negotiation sessions with County staff where details were worked out, County staff offered many comments and revisions, and an agreed upon draft ultimately emerged for Board review.

The process for the KV Project is in stark contrast to the Wild Horse example. To date, County staff discussion with Horizon has been limited to issue identification. Despite our

requests to discuss the Development Agreement, no negotiation of details or defined terms in the Development Agreement has been offered by staff, which could otherwise result in presentation of an agreed upon draft for the BOCC's review. The current process has resulted in the applicant being publicly chastised for trying to respond in good faith to the County. This does not contribute to or otherwise enhance the process. Most recently, a litany of minor queries were raised by the County for the first time, in a public hearing setting, after six months' opportunity to review the Development Agreement. Our shared interest in reaching a negotiated agreement would have been much better served, and the miscommunication and misunderstanding greatly reduced, had these issues been raised — as in the Wild Horse process — prior to the hearing, allowing us the opportunity to respond in a meaningful way and to resolve issues before going into a public hearing setting. Such misunderstandings do a disservice to everyone if the common goal is to work together toward an agreed upon resolution. A public hearing, at which the applicant cannot speak except to respond to direct questioning from the BOCC, nor present "new information" in response to newly raised issues from the BOCC, hinders the communication process and does not constitute constructive negotiation. As we stated above, we believe that the inability to have a robust, productive, good faith negotiation with staff operating under the Board's explicitly delegated authority is a significant, unintended consequence of the County's current process and that it fosters misunderstanding and miscommunication.

We feel that Horizon has made every attempt to review the record and provide information and mitigation to the Board in response to Board requests. This has been increasingly challenging throughout this process with conflicting statements offered by Board members, on the record. For example, during the April 12 hearing, two conflicting statements were made by one commissioner regarding the Development Agreement. Unfortunately for Horizon, we followed the latter statement of record, that when setbacks are mitigated, *then* he would look at a Development Agreement. We further note that the Board did not take any formal action (by motion) requesting a revised Development Agreement until this most material of issues was resolved, and that one Commissioner's stated opinion does not constitute formal action by the BOCC. It is also difficult to mitigate impacts when it was stated during the April 27 hearing that the noise level "was relatively quiet" and the next hearing the same commissioner states "noticeable noise levels" during the May 3 hearing. We have honestly tried to respond in a good faith manner and to the best of our ability, but we find the way information is exchanged and the nature of the Board's requests to be confusing.

Another source of confusion has stemmed from staff's advice that the applicant use the Wild Horse template for the Kittitas Valley project. In reliance thereon, Horizon did so, but also made substantive changes to the content of the document, reflecting differences between the two projects. During the hearing on April 27, 2006, Horizon was severely chastised for submitting a "cut and paste" of the Wild Horse document. In response, Horizon refined the Development Agreement and resubmitted it on May 1, 2006. On May 3, 2006, the County staff raised, for the first time, concerns that there were provisions that had been present in the Wild Horse Development Agreement that were absent in the Kittitas Valley draft Development Agreement. These differences had been

absent in all drafts since the December version submitted 6 months earlier, but issues about the distinctions were raised for the first time by the County staff on May 3, 2006. Horizon had sound reasons for these changes, and has always been available to discuss these with staff, as we did in the Wild Horse Project. It has proved increasingly difficult for Horizon to discern what the County expects when it is first informed that the Wild Horse document serves as a good start for this proposal, then is admonished by the County for using it as a template in KV, and then is criticized for the differences between the two.

Regarding setback distances, the Board of County Commissioners stated its position at the May 3 hearing: it believed the required setbacks from project boundaries and existing residential structures should be somewhere from 2,000 feet to 3,000 feet. As is readily apparent from reviewing the record, setbacks in the range discussed by the Board could eliminate 43% of the revised project's 65 turbines. We enclose a project map to demonstrate this impact on the Project. The May 3 hearing was the first time the Board or their staff ever proposed a specific setback distance, despite Horizon having proposed 1,000 foot setbacks since the original application and more recently increased that proposal by 32% as referenced above. Having previously advised staff and the Board of County Commissioners that setbacks greater than a quarter-mile rendered the project economically unviable, and having been repeatedly told by the Board that no new information would be allowed since the record was closed, Horizon was left with no choice other than to conclude the company's remarks by restating that the Board's direction on setbacks made the project unviable.

Every investor owned utility in Washington is currently seeking to add additional energy sources, specifically renewable resources. Moreover, such a reduced project leaves many of our landowners without project facilities. It certainly would dramatically decrease tax revenues to the County and other governmental jurisdictions, including the State School Trust, administered by the Department of Natural Resources, depriving the State of much needed energy and financial resources. The KV project is currently under consideration by regional utilities and is on a short list for a potential transaction with Puget Sound Energy. In an era where demand for clean renewable energy is increasing dramatically locally, statewide, regionally and nationally, the KV Project is a very important facility for local, statewide, regional and national energy needs. An insignificant remnant of the originally proposed number of turbines, and a dramatically reduced energy generation capacity, is not a project that can reasonably compete in the marketplace, and it is not the project presently under consideration by Puget Sound Energy or other potential customers.

We now understand that the BOCC may desire that County staff begin negotiations. Horizon is interested in discussing all elements of the Development Agreement, but we point out that our position iterated in our letter dated April 25, 2006, remains clear - the maximum setback that Horizon can consider is one-quarter mile. A letter was submitted to Kittitas County on May 4, 2006 advising the staffing agreement will terminate in 30 days. We are willing to sit down and talk with the County and we are open to your suggestions on how to proceed forward. We continue to be committed to making all

reasonable efforts aimed at achieving consistency with County plans and regulations within the time frame of the staffing agreement. Should the Board determine to continue with the Development Agreement negotiations, Horizon requests clear guidance from the Board regarding the process and procedure to be followed for the negotiations, including a clear definition of the scope of authority its staff has to actually negotiate, not simply discuss, material terms so that a draft Development Agreement can be presented to the BOCC for its consideration.

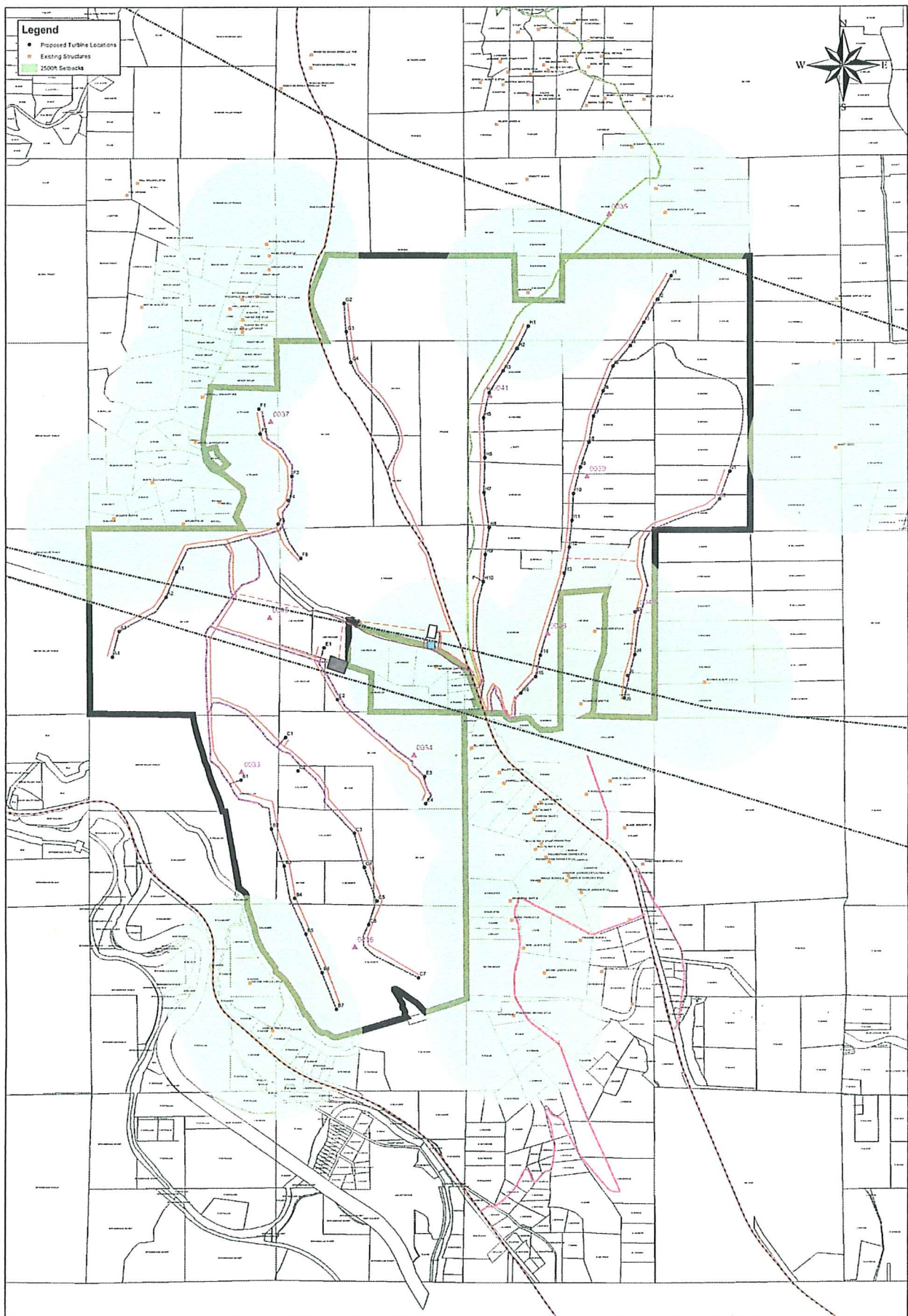
We look forward to receiving your reply.

Very truly yours,


Erin L. Anderson

Attachment

cc: client
Jim Hurson, Chief Civil Deputy Prosecuting Attorney
Community Development Services
Board of County Commissioners



Kittitas Valley Wind Power Project
Preliminary Site Layout Setback Analysis
Setbacks from Structures
Map Revised May 15, 2006

